**PREMIUM VEGETABLE OILS SDN BHD**

**v.**

**PALM OIL RESEARCH AND DEVELOPMENT BOARD MALAYSIA & ANOR**

COURT OF APPEAL, KUALA LUMPUR
MOKHTAR SIDIN JCA
KC VOHRAH JCA
FAIZA TAMBY CHIK J
[CIVIL APPEAL NO: W-02-150-1997]
25 JUNE 2002

***STATUTORY INTERPRETATION:*** *Taxing statute - Clear and unambiguous language needed to levy tax - Whether Palm Oil Research and Development Act 1979 a taxing statute - Strict interpretation - Whether there was ambiguity - Whether governing authority empowered to collect cess - Whether Act and Orders made thereunder applied to subject matter to justify imposition of cess*

***REVENUE LAW:*** *Research and development tax - Agricultural produce - Imposition of cess - Whether Palm Oil Research and Development Act 1979 a taxing statute - Clear and unambiguous language needed to levy tax - Whether governing authority empowered to collect cess - Whether Act and Orders made thereunder applied to subject matter to justify imposition of cess*

The appellant, a palm oil miller, was involved in the extraction of crude palm oil ('CPO') and crude palm kernel oil ('CPKO'). Relying on the Palm Oil (Research Cess) Order 1979 (the 1979 Order), the respondents imposed cess upon the appellant in relation to CPO and CPKO. In contending that there was a difference between the two, the appellant submitted that the respondents could only impose cess on CPO. They applied to the High Court for a declaration that the respondents were not empowered to levy and collect cess for CPKO, and also for a refund of cess paid on CPKO. The respondents counter claimed and this was allowed by the trial judge who thereupon dismissed the appellant's application. Hence, this appeal.

**Held:**
**Per Mokhtar Sidin JCA**

**[1]** In the construction of any revenue law, the subject is not to be taxed unless there are clear words in the Act imposing such a tax. There is no room to look into the purpose, the object or the intent the Act was legislated. Additionally, to determine the true meaning of any statute, one may refer to a similar statute. (p 831 a-b & h)

**[2]** By imposing cess, the Palm Oil Research and Development Act 1979 ('the 1979 Act') was a taxation statute. As such, the strict interpretation should be given. Where there is any ambiguity, then it should be decided in the taxpayer's favour, *ie*, the appellant. (p 832 a)

**[3]** The PORLA Act 1976 ('the 1976 Act') which was inter-related to the 1979 Act, showed that the authority recognised the distinction between a seed and a kernel. This was further fortified by Malaysian Palm Oil Board Act 1998 which repealed and replaced the 1976 Act and the 1979 Act. (p 832 c & d)

**[3a]** The 1979 Act imposed cess on palm oil extracted from the fruits and the seeds, not on palm oil extracted from the kernel. It followed that the respondent could only impose cess on the appellant for CPO and not CPKO under the 1979 Act. (p 832 g & h)

**Per KC Vohrah JCA**

**[1]** No reference was made to oil palm kernel, either in the 1979 Act or the amended orders thereafter. It was noted from the testimony of the respondents' witness that there was a clear distinction between oil palm fruit and the oil palm seed which contained within itself the oil palm kernel. (p 837 g)

**[2]** The trial judge did notice the inherent ambiguity of the language used in s. 2 of the 1979 Act in relation to the phrase "crude palm oil" in defining "palm oil" and the various Orders. However, he had erred in interpreting para. 3 of the 1979 Order by attempting to widen the scope of its application. The said Order is a subsidiary legislation and cannot enlarge what is circumscribed by the enabling provision of the mother Act. (p 839 a & d)

**[2a]** It was incorrect for the trial judge to try to harmonise the language of the 1979 Act with the language of the Orders made thereunder. Words cannot be used loosely in a taxing provision. They must be clear and unambiguous to impose liability on the subject. This applied to the extent that the Amending Orders were *ultra vires* the 1979 Act by imposing cess on palm oil extracted from only oil palm seeds. (p 839 e & i)

*[Appeal allowed with costs.]*

*[**Bahasa Malaysia** Translation Of Headnotes]*

Perayu, seorang pengisar kelapa sawit, terlibat dalam pengeluaran minyak sawit mentah ('CPO') dan isirung kelapa sawit mentah ('CPKO'). Bergantung pada Perintah Minyak Kelapa Sawit (Ses Kajian) 1979 ('Perintah 1979'), responden-responden mengenakan ses ke atas perayu berhubung dengan CPO dan CPKO. Dalam menegaskan bahawa terdapatnya perbezaan antara kedua-duanya, perayu telah berhujah bahawa responden-responden hanya boleh mengenakan cess ke atas CPO. Mereka telah memohon kepada Mahkamah Tinggi untuk satu deklarasi bahawa responden-responden tidak diberi kuasa untuk melevikan dan mengutip ses untuk CPKO, dan untuk membayar balik ses yang dibayar ke atas CPKO. Responden-responden telah menuntut balas dan ini telah dibenarkan oleh hakim perbicaraan yang selepas itu telah menolak permohonan perayu. Oleh itu, menyebabkan rayuan ini.

**Diputuskan:**
**Oleh Mokhtar Sidin HMR**

**[1]** Dalam pembentukan sebarang undang-undang hasil, pihak berkenaan tidak seharusnya dicukai kecuali terdapatnya perkataan-perkataan yang nyata di dalam Akta tersebut yang mengenakan cukai yang sedemikian. Tidak terdapat sebarang ruang untuk meneliti tujuan objek atau niat Akta tersebut diperundangkan. Tambahan pula, untuk menentukan maksud sebenar sebarang statut, seseorang boleh merujuk kepada statut lain yang sama.

**[2]** Dengan mengenakan ses, Akta Kajian dan Pembangunan Kelapa Sawit 1979 ('Akta 1979') merupakan statut pencukaian. Oleh yang demikian, pentafsiran yang tegas haruslah diberikan. Di mana terdapat sebarang ketaksaan, maka ianya haruslah diputuskan memihak kepada pembayar cukai, iaitu perayu.

**[3]** Akta PORLA 1976 ('Akta 1976') yang berkait dengan Akta 1979, menunjukkan bahawa pihak berkuasa mengiktiraf perbezaan antara biji benih dan isirung. Ini telah selanjutnya diperkukuhkan oleh Akta Lembaga Minyak Kelapa Sawit Malaysia 1998 yang memansuhkan dan menggantikan Akta 1976 dan Akta 1979.

**[3a]** Akta 1979 mengenakan ses ke atas minyak kelapa sawit yang dikeluarkan daripada buah dan biji benih, bukannya minyak kelapa sawit yang dikeluarkan daripada isirung. Di dapati bahawa responden-responden hanya boleh mengenakan ses ke atas perayu untuk CPO dan bukan CKPO di bawah Akta 1979.

**Oleh KC Vohrah HMR**

**[1]** Tiada rujukan dibuat kepada isirung kelapa sawit, sama ada di dalam Akta 1979 atau perintah-perintah terpinda selepas itu. Adalah diperhatikan daripada keterangan saksi responden-responden bahawa terdapat perbezaan yang nyata antara buah kelapa sawit dan biji benih kelapa sawit yang mana mengandungi isirung kelapa sawit.

**[2]** Hakim perbicaraan tidak memerhatikan ketaksaan sedia ada bahasa yang dipakai di dalam s. 2 Akta 1979 tersebut berhubung dengan frasa "crude palm oil" dalam mentakrifkan "palm oil" dan pelbagai perintah-perintah. Walaubagaimanapun, beliau telah tersilap dalam mentafsirkan perenggan 3 Perintah 1979 dengan cuba untuk memperluaskan skop pemakaiannya. Perintah ini adalah suatu perundangan subsidiari dan tidak boleh memperluaskan apa yang telah dihadkan oleh Akta tersebut.

**[2a]** Ianya adalah tidak betul untuk hakim perbicaraan mencuba bagi menyesuaikan bahasa Akta 1979 itu dengan bahasa perintah-perintah yang dibuat di bawahnya. Perkataan-perkataan tidak boleh digunakan secara samar-samar di dalam peruntukan pencukaian. Ianya mestilah jelas dan nyata untuk mengenakan tanggungan kepada pihak berkenaan. Ini terpakai sehinggakan perintah-perintah terpinda tersebut didapati *ultra vires* Akta 1979 dengan mengenakan ses ke atas minyak kelapa sawit yang dikeluarkan daripada hanya biji benih kelapa sawit.

*[Rayuan dibenarkan dengan kos.]*

**Case(s) referred to:**

*Comptroller-General of Inland Revenue, Malaysia v. T [1970] 2 MLJ 35* ***(refd)***

*Greenwood v. FL Smidth and Company [1922] 1 AC 417* ***(refd)***

*National Land Finance Co-operative v. Director General of Inland Revenue [1993] 4 CLJ 339* ***(foll)***

**Legislation referred to:**

Interpretation Acts 1948 and 1967, s. 17A

Malaysian Palm Oil Board Act 1998, ss. 2, 35

Palm Oil (Cess) (Amendment) Order 1988, s. 2

Palm Oil (Cess) Order 1978, s. 2

Palm Oil Registration and Licensing Authority (Incorporation) (Amendment) Act 1982, s. 2

Palm Oil Research and Development Act 1979, ss. 2, 14

Palm Oil (Research Cess) (Amendent) Order 1982, ss. 1, 2

Palm Oil (Research Cess) Order 1979, ss. 1-6

PORLA Act 1976, ss. 11, 16

*For the appellant - Saseedharan Menon (Ananth Namasivayam & Khabir Dhillon); M/s M David Morais*

*For the respondent - Shahul Hameed Amiruddin (Woo Lai Mei); M/s Zul Rafique & Partners*

*[Appeal from High Court, Suit No: D1-22-1286-1993]*

*Reported by Maheswaran Murugasen*

## JUDGMENT

**Mokhtar Sidin JCA:**

The appellant is a company incorporated in Malaysia. They have two factories, one at Kulai engaged in the extraction of crude palm oil (hereinafter referred to as 'CPO') only from the whole fruits and the other at Pasir Gudang, Johor engaged in the extraction of crude palm kernel oil ('CPKO') from the kernel of oil palm fruits. It is not disputed that the appellant are palm oil millers within the definition as provided for under the Palm Oil Research and Development Act 1979 (hereinafter referred to as "the 1979 Act") and the Palm Oil (Research Cess) Order 1979. Clauses 2 and 3 of the Palm Oil (Research Cess) Order 1979 provides as follows:

> 2. In this Order "palm oil miller' means a person who carries on the business of extracting oil from oil palm fruits and/or seeds.
>
> 3. Every palm oil miller shall pay a cess of four ringgit for every metric ton or part of a metric ton of crude palm oil produced by him.

It is also not disputed that the Palm Oil (Research Cess) Order 1979 was amended in 1982 and 1984. The amendment in 1984 is not relevant for the purpose of this appeal. The 1982 amendment is relevant in view of the definition found in para. 2:

> 2. The Palm Oil (Research Cess) Order 1979 is amended by substituting the following paragraph or paragraph 1;
>
> | | |
> |---|---|
> | Citation and commencement | 1. This Order may be cited as the Palm Oil (Research Cess) Order 1979 and shall come into force on the 1st January 1980 in respect of cess on crude palm oil extracted from oil palm fruits and on the 1st July 1980 in respect of cess on crude palm oil extracted from oil palm seeds. |

As can be seen from this paragraph cess was imposed on crude palm oil extracted from oil palm fruits and from 1 July 1980 cess was to be imposed on crude palm oil extracted from oil palm seeds.

Pursuant to the 1979 Order the respondents imposed cess in respect of the crude oil extracted from the oil palm fruits (CPO) and from 1 July 1980 imposed cess in respect of crude oil extracted from the kernel of the oil palm fruits (CPKO). The respondents imposed cess on CPKO on the ground that it was crude oil extracted from the seed. The appellant did not dispute the imposition of cess on CPO but disputed the cess imposed on CPKO. In the present appeal the respondents had imposed the sum of RM363,034 as cess on CPKO to which the appellant had paid. As I have stated earlier the appellant disputed the imposition of cess in respect of CPKO and took up the present action seeking a declaration that the respondents were not empowered to levy and collect the cess on CPKO and for the refund of the cess imposed and paid by the appellant. The respondents in turn counter-claimed for the sum of RM255,300 where the cess imposed on CPKO had not been paid by the appellant.

The appellant contended that the 1979 Act and the Orders made thereunder did not cover CPKO. The imposition of cess was only on CPO and not on CPKO.

In order to understand the difference between CPO and CPKO the appellant submitted and not disputed by the respondents that CPO is the crude oil extracted from the oil palm fruits while CPKO is the crude oil extracted from the kernel of the crushed fruits of the oil palm. The crude oil extracted from the kernel is done chemically whereas the CPO is extracted by crushing the whole fruits. As I have stated earlier, it is also not disputed that the appellant maintained two factories, one in Kulai and the other in Pasir Gudang. The factory at Kulai extracted CPO by crushing the whole oil palm fruits. The kernel of the crushed fruits were then collected and sent to the Pasir Gudang factory where CPKO was extracted chemically.

It is the contention of the learned counsel for the appellant that CPKO is not crude oil from the oil palm fruits or seeds as stipulated by s. 2 of the 1979 Act which provides the following definition:

> "palm oil" means oil, whether in crude or further processed form, extracted from oil palm fruits and seeds.

The respondents, on the other hand, contended that CPKO is crude oil extracted from the seeds of the oil palm and as such the respondents have the right to impose cess on CPKO under the 1979 Act and the Orders made thereunder. The learned judge in the court below held that CPKO is crude oil extracted from the seeds of the oil palm and the respondents were right in imposing the cess on CPKO extracted by the appellant at their Pasir Gudang factory. Being dissatisfied with the decision the appellant appealed to this court.

Before us the learned counsel for the appellant submitted that the 1979 Act and the Orders made thereunder empower the imposition of cess only on CPO and not on CPKO since CPO is extracted from oil palm fruits and/or seeds. On the other hand, CPKO is not extracted from oil palm fruits and/or seeds but from the kernel of the oil palm fruits. He went on to explain (not disputed by the respondents) that the extraction of CPO from the whole fruits and seeds was done physically, ie, by forcing the fruits through a press. This process is called crushing. The extraction of CPKO from the kernels is by way of chemical solvents. The kernels are collected from the crushed fruits.

The learned counsel for the appellant submitted that s. 14 of the 1979 Act empowers the minister to make Orders for the imposition of cess on "palm oil". The learned counsel further submitted that s. 2 of the 1979 Act defines "palm oil" as oil extracted from the oil palm fruits and seeds which is commonly known as CPO. The learned counsel also submitted that there is no ambiguity in the 1979 Act in that the cess to be imposed is only on the CPO. That being the case under the Act the minister is empowered to make an order in respect of imposition of cess on CPO only and not others (including CPKO). The minister through the 1979 Order and subsequent amendment Orders seek to impose cess on CPKO by varying the definition of palm oil slightly in that instead of using the word "and" the Order used the words "and or". The learned counsel for the appellant submitted the words "palm oil" in the Order should be given the same meaning as the Act in that the words "crude oil from oil palm fruits and seeds" should be read conjunctively and not disjunctively as provided for in the 1979 Order. Even if the Order intended the words to be read disjunctively as stated in the 1982 amendment Order it should be ignored. To do otherwise would render the 1979 Order and the subsequent amendment Orders be *ultra vires* of the Act because the minister is only empowered under the definition of the Act to impose cess on crude oil from the oil palm fruits and seeds which is CPO.

To strengthen his arguments the learned counsel for the appellant then referred to the PORLA Act 1976 (hereinafter referred to as "the 1976 Act"). It is to be noted the "Minister" referred to in the 1976 Act and the 1979 Act is the same person. Learned counsel for the appellant submitted that the 1976 Act made clear distinctions between oil palm fruits, oil palm seeds and paint kernels as found in ss. 11 and 16 of the 1976 Act which provide:

> 11. Functions of the Authority
>
> The functions of the Authority are:
>
> (a) to regulate, co-ordinate and promote all activities relating to the supply, sale, purchase, distribution, movement, storage, export and import of oil palm fresh fruit, palm oil and palm kernel, and the milling of oil palm fresh fruit;

...

16. Cess on Palm Oil and Research Cess

(1) The Authority with the approval of the Minister given after consultation with the Minister of Finance, make orders for the imposition, variation or cancellation of a cess on palm oil and palm kernel and the orders may specify the nature, amount and rate of cess and the manner of collection of the cess.

(2) Orders made under this section may prescribe different amounts and rates of cess for different categories, standards or grades of palm oil and palm kernel.

(3) The Authority may, with the approval of the Minister given after consultation with the Minister of Finance, make orders for the imposition, variation or cancellation of a research cess on palm oil and palm kernel; and the orders may specify the nature, amount and rate of research cess and the manner of collection of the cess.

This distinction was further clarified when the 1976 Act was amended in 1982 by the Palm Oil Registration and Licensing Authority (Incorporation) (Amendment) Act 1982 where it is provided as follows:

2. Amendment of section 2

Section 2 of the Palm Oil Registration and Licensing Authority (Incorporation) Act 1976, which in this Act is referred to as "the principal Act", is amended by:

...

(c) inserting immediately after the definition of "oil palm fruit" appearing therein the following new definition:

"oil palm product" means any product obtained directly from the oil palm and does include palm oil, palm kernel, palm kernel cake, palm fatty acids, oil palm seeds and oil palm seedlings;

(d) substituting for the definition of "pain; oil" appearing therein the following:

"palm oil" means oil, whether in crude or processed form, extracted from oil palm fruits or oil palm seeds:'

...

4. Amendment of section 11

Section 11 of the principal Act is amended by:

(a) substituting for the words "oil palm fresh fruit, palm oil and palm kernel and the milling of oil palm fresh fruit," appearing in paragraph (a) thereof the following words:

"oil palm product, and the milling of oil palm fruit;" and

(b) substituting for the words "oil palm fresh fruit, palm oil and palm kernel" appearing in paragraph (b) thereof the words "oil palm product".

...

7. Amendment of section 16

Section 16 of the principal Act is amended by substituting for the words "palm oil and palm kernel" appearing in subsections (1) and (2) thereof the words "oil palm product"."

The first Order under the 1976 Act was the Palm Oil (Cess) Order 1978 which provides as follows:

2. Imposition of cess

Every palm oil miller shall pay a cess of one dollar on every metric ton or part of a metric ton of crude palm oil produced by him.

This Order was subsequently amended in 1988 by the Palm Oil (Cess) (Amendment) Order 1988. The relevant amending provisions are as follows:

2. Amendment of paragraph 2

The Palm Oil (Cess) Order 1978, which in this Order is referred to as "the principal Order", is amended by substituting for paragraph 2 the following new paragraph 2:

2. Imposition of Cess

Any person who produces crude palm oil or crude palm kernel oil shall pay a cess of two ringgit and seventy five sen on every metric ton or part of a metric ton of crude palm oil or crude palm kernel oil produced by him.

3. Paragraph 3 of the principal Order is amended:

(a) by substituting for the words "Every palm oil miller" the words "Any person who produces crude palm oil or crude palm kernel oil"; and

(b) by inserting after the words "crude palm oil the words "or crude palm; kernel oil".

4. Paragraph 4 of the principal Order is amended:

(a) by substituting for the words "Every palm oil miller" the words "Every person produces crude palm oil or crude palm kernel oil"; and

(b) by inserting after the words "crude palm oil" the words "or crude palm kernel oil".

It was pointed out to us that the 1976 Act and the 1979 Act were repealed by the Malaysian Palm Oil Board Act 1998 (Act 582). The learned counsel for the appellant then invited us to refer to ss. 2 and 35 of the 1998 Act which read:

2. Interpretation

In this Act, unless the context otherwise requires:

...

"oil palm product" means any product obtained directly from the oil palm or wholly or partly manufactured or derived from such product and includes palm oil, palm kernel, palm kernel cake, oil palm shell, palm fatty acids, oil palm planting material, oil palm fruit, oil palm fibre, oil palm empty fruit bunches, oil palm fronds, oil palm trunks, oil palm roots, oil palm based fibreboards, oil palm based pulp and paper and oil palm based chemicals;

"palm oil" means oil, whether in crude or processed form, originating or extracted from the pericarp of the oil palm fruit, and includes oil, whether in crude or processed form, originating or extracted from the kernel of the oil palm fruit;

35. Cess on oil palm product

(1) The Minister may, after consultation with the Minister of Finance, make orders for the imposition, variation or cancellation of a cess on oil palm products produced in or exported from Malaysia and the orders may specify the nature, amount and rate of the cess and the manner of collection of the cess.

The learned counsel for the appellant referred to the provisions in the various legislations and subsidiary legislations in order to show us that there is a clear distinction between CPO and CPKO. The 1979 Act seeks to impose cess only on CPO and not on CPKO.

To illustrate the distinction between CPO and CPKO the learned counsel referred to the evidence of PW2 as found in the record. In his evidence PW2 stated that the appellant carried out two operations. The first is the production of CPO from the oil palm fruits during which the palm kernel was produced. The second operation was the extraction of CPKO from the palm kernel and

then processing the CPKO into speciality fats for making chocolates and non-dairy products. PW2 went on to state that the shell and the kernel is called the nut. Though the nut and the seed used interchangeably but in the palm industry a seed is used in the propagation of the plant which is used as a material for reproduction. A nut consists of the shell and the kernel. The kernel is one part of the nut (the encased part). The shell is the harder part to encase the softer white substance (the kernel). The kernel by itself cannot be a seed because one could not grow a plant out of it without the shell. Admittedly, it is a product of the fruit of an oil palm tree. CPKO is extracted from the kernel. In order to produce the kernel one has to crush the shell and separate the kernel from the shell.

The respondents, on the other hand, through their sole witness (DW1) gave evidence that the seed of an oil palm comprises of the shell, the kernel and the embryo. The embryo is the one that grows into a new plant. The kernel is the pod reserve to support the growth of a young plant and the shell is the hard protective layer which plays no part in the germination process. As such the seed constitutes the shell, the kernel and the embryo and as such the seed and the nut are the same.

The idea of this microscopic distinction by the appellant is to show that CPKO is not extracted from the seed and is not subject to cess. It is clear in my mind that the respondents imposed the cess on the basis that CPKO is a product from the seed which is covered by the 1979 Act and the Orders made thereunder. The appellant, on the other hand, contended that the cess could not be imposed on CPKO because the crude oil extracted is from the kernel only and not from the nut or seed.

From the evidence it is clear to me that though the nut or seed consists of the shell, kernel and embryo, the kernel by itself cannot be said to be a nut or a seed. The witness for the respondents cited the coconut oil as an example where he said that the coconut oil could only be extracted from the kernel. With the greatest respect to that witness it is clear from the evidence that an oil palm fruit produces two types of oil, one is from the outer soft pulpy layer which is called the mesocarp which is known as CPO and the other is from the kernel which is known as CPKO. There is no dispute in respect of this. It is clear to me that the appellant conceded that the CPO attracted cess under the 1979 Act and the Orders made thereunder. On the other hand, the appellant contended that cess could not be imposed on CPKO because it is not extracted from an oil palm fruit or seed since it is extracted from the kernel alone which by itself could not be termed as a fruit or seed. The learned counsel further submitted that palm oil which attracts cess is defined in the 1979 Act as follows:

'palm oil' means oil, whether in crude or further processed form, extracted from oil palm fruits and seeds.

The learned counsel for the appellant submitted that cess is a tax. As such any law which imposes cess should be stated in clear and plain terms. No ambiguity should exist. The learned counsel for the appellant then cited a statement by Lord Buckmaster in *Greenwood v. F.L. Smidth and Company* [1922] 1 AC 417 at p. 423:

> ... It is, I think, important to remember the rule, which the Courts ought to obey, that, where it is desired to impose a new burden by way of taxation, it is essential that this intention should be stated in plain terms. The Courts cannot assent to the view that if a section in a taxing statute is of doubtful and ambiguous meaning, it is possible out of that ambiguity to extract a new and added obligation not formerly cast upon the taxpayer. ...

The learned counsel also cited the Federal Court decision in *Comptroller-General of Inland Revenue, Malaysia v. T* [1970] 2 MLJ 35. In that case the respondent was employed as chief staff surveyor with the Malaya-Borneo Building Society. He was told by a letter dated 3 February 1960 that if at any future time it be necessary to declare expatriate staff redundant, staff surveyors would be granted compensation for loss of office on terms not less generous than those that apply to redundancy. On 25 November 1965, the respondent was informed that he would be declared redundant and paid redundancy pay of $28,050. The Comptroller-General declared this sum was subject to tax on the ground that it was income received by the respondent "as gains or profits from employment". That view was upheld by the Special Commissioners but the High Court reversed that decision. On appeal to the Federal Court, Gill FJ (as he then was) at p. 40 said:

> The words of section 10 in themselves do not unambiguously impose a tax for payments made as compensation for loss of office. In the absence of a clear intention that tax should be imposed, the respondent is not liable to payment for the sum granted for the abrogation of his contract. It is an important canon in the construction of revenue Acts that the subject is not to be taxed unless there are clear words in the Act imposing such a tax. In this connection, Lord Blackburn said in the House of Lords in *Coltness Iron Company v. Black:*
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> > No tax can be imposed on the subject without words in an Act of Parliament clearly showing an intention to lay a burden on him. ... and I think the only safe rule is to look at the words of the enactment and see what is the intention expressed by those words.
>
> Lord Simmons in *Russell v. Scott* reasserted the same rule of construction when he addressed the House of Lords in the following words:

> My Lords, there is a maxim of income tax law which though it may sometimes be over-stressed, yet ought not to be forgotten. It is that the subject is not to be taxed unless the taxing statute unambiguously impose the tax on him. It is necessary that this maxim should on occasion be reasserted and this is such an occasion.

...

This new Act satisfies the rule to which reference was made by Lord Buckmaster in *Greenwood v. FL Smidth & Co* in the following words:

> It is, I think, important to remember the rule, which the courts ought to obey, that, where it is desired to impose a new burden by way of taxation, it is essential that this intention should be stated in plain terms. The courts cannot assent to the view that if a section in a taxing statute is of doubtful and ambiguous meaning, it is possible out of that ambiguity to extract a new and added obligation not formerly cast upon the taxpayer.

The later Act of 1967 imposes a new liability, extends the burden and clearly alters the intention of the earlier Ordinance of 1947. In view of this, it is proper to interpret the earlier Ordinance by reference to the later Act if, in the words of Lord Buckmaster in *Ormond Investment Company Ltd v. Betts*, the provision in the earlier Act is "fairly and equally open to divers meanings".

In *Kirkness v. John Hudson & Co Ltd* it was held that a later statute may not be referred to for the purpose of interpreting clear terms of an earlier Act which the later statute does not amend, even though both Acts are by the express provision of the later statute to be construed as one, unless the later statute expressly places a particular interpretation on the terms of the earlier Act; but if the earlier enactment was ambiguous, a later statute may throw light on the true interpretation of that enactment, as where a particular construction of the earlier enactment will render the later incorporated statute effectual. *Maxwell on Interpretation of Statutes*, 11th edn, at p. 22 says:

> There is some presumption that Statutes passed to amend the law are directed against defects which have come into notice about the time when those Statutes passed.

In my judgment there can be little doubt that there was a defect in the Ordinance of 1947 which has been cured by the new Act by including in the definition of "gains or profits from an employment" the words "compensation for loss of employment" which are not to be found in the earlier Ordinance. Clearly, therefore, the compensation paid to the respondent on the abrogation of his contract of service is not liable to tax under the Ordinance of 1947. Indeed, it was acknowledged by counsel for the appellant in the court below that if the sum paid to the respondent is held to be compensation for loss of office, then it is not liable to income tax under that Ordinance.

That case laid out two principles. Firstly, in the construction of any revenue law the subject is not to be taxed unless there are clear words in the Act imposing such a tax. Secondly, to determine the true meaning of any statute one may refer to a later similar statute. In my view, both principles are applicable to the present appeal.

The Supreme Court applied the first principle in *National Land Finance Co-operative v. Director General of Inland Revenue* [1993] 4 CLJ 339 where it was held that where there was a doubt, the ambiguity must be construed in favour of the appellant as the exemption from tax had not been removed by sufficiently clear words to achieve that purpose. At p. 344 Gunn Chit Tuan, CJ (Malaya) (as he then was) said:

> There are ample authorities to show that courts have refused to adopt a construction of a taxing Act which would impose liability when doubt exists. In *Re Micklewait* it was held that a subject was not to be taxed without clear words. We realize that revenue from taxation is essential to enable the Government to administer the country and that the courts should help in the collection of taxes whilst remaining fair to taxpayers. Nevertheless, we should remind ourselves of the principle of strict interpretation as stated by Rowlatt J in *Cape Brandy Syndicate v. Inland Revenue Commissioners*:
>
> > ... In a taxing Act one has to look merely at what is clearly said. There is no room for any intendment. There is no equity about a tax. There is no presumption as to a tax. Nothing is to be read in, nothing is to be implied. One can only look fairly at the language used ...
>
> It has also been said by the Judicial Committee in *Oriental Bank Corp v. Wright* that the intention to impose a charge upon a subject must be shown by clear and unambiguous language.

The learned counsel for the appellant went at great length to show us that the cess stated in the 1979 Act and the Orders made thereunder is tax by referring to the dictionary, Lexicon and Words and Phrases. There is no necessity for the appellant to do so because in my mind the cess imposed is a tax within the meaning of taxing issues. Further, there is no denial by the respondents. Despite that the learned counsel for the respondents urged this court to give a liberal interpretation and see the purposes that the Act was legislated as provided by s. 17A of the Interpretation Acts 1948 and 1967.

With the greatest respect to the learned counsel for the respondents I am bound by the established principles in that in taxing statute one has only to look what is clearly said in the statute. There is no room to look into the purpose, the object or the intent that the Act was legislated.

Looking at the 1979 Act, it is clear to me that the imposition of cess was a taxation statute. As such the strict interpretation should be given. Where there is any ambiguity then it should be decided in favour of the taxpayer, *viz-a-viz* the appellant in the present appeal. In my view, cess could not be imposed on CPKO since it is palm oil extracted from the kernel. The kernel, in my view, cannot be said to be seed. The 1976 Act which was inter-related to the 1979 Act, shows that the authority knew there is a distinction between a seed and the kernel. This was made clear by the subsidiary legislations of the 1976 Act which gave distinct and definite definition of seed and kernel.

As pointed out to us, both the 1976 Act and the 1979 Act were repealed and replaced by the Malaysian Palm Oil Board Act 1998. This new Act which came into force on 1 May 2000 makes it clear in s. 2 that palm oil includes oil extracted from the kernel of the oil palm fruit. The definition of palm oil in s. 2 provides:

> "palm oil" means oil, whether in crude or processed form, originating or extracted from the pericarp of the oil palm fruit, and includes oil, whether in crude or processed form, originating or extracted from the kernel of the oil palm fruit.

As such there is clear distinction between the kernel and the seed.

Applying the principle that to determine the true meaning of any statute one may refer to a later similar statute as stated by Gill FJ in *Comptroller-General of Inland Revenue, Malaysia v. T* [1970] 2 MLJ 35, it is clear to me that the 1979 Act was to impose cess on palm oil extracted from the fruits and the seeds and not on palm oil extracted from the kernel. Cess on palm oil extracted from the kernel is only imposed by the 1998 Act.

For the reasons above-stated, I agree with the submission of the learned counsel for the appellant that there is a distinction between palm oil extracted from the seed and palm oil extracted from the kernel. As such the 1979 Act seeks to impose cess only on palm oil extracted from the fruit and the seed and not on palm oil extracted from the kernel. In other words, the 1979 Act imposed cess only on CPO and not on CPKO.

For the above reasons, I will allow the appeal with costs here and below. The respondents could not impose cess on CPKO and whatever cess imposed and paid by the appellant should be refunded. The deposit is to be refunded to the appellant.

Both parties conceded that our decision in this appeal would be binding in the appeal listed as MRRS No. W-02-671-2000.

My learned brother, Faiza Tamby Chik, J has the opportunity of reading my judgment in draft and the draft judgment of KC Vohrah, JCA and expressed his view that he agrees with both judgments and the conclusion therein.

**KC Vohrah JCA:**

There are two appeals involving the same subject matter and all counsel who appear for the same parties in both cases have opted to have this appeal heard and the decision on it binding on the other appeal, Civil Appeal No. W-02-671-00.

The Palm Oil Research and Development Act 1979 (the said Act) established the Malaysia Palm Oil Research and Development Board (the Board) and provided, *inter alia*, for the establishment and administration of a fund (see s. 10) for the purpose of financing research. Into this fund were paid monies collected from various sources including cess collected under s. 14.

Under s. 14 of the said Act the Minister (for the time being charged with the responsibility for the oil palm industry) "may, after consultation with the Board and with the Minister of Finance, make orders for the imposition, variation or cancellation of a research cess on **palm oil**; and the orders may specify the nature, the amount and rate and the manner of collection of the cess."

I have bold the word "palm oil" mentioned in s. 14 because it contains the seed of dispute in this case.

On 14 December 1979 the Minister made an order under the said s. 14 cited as the Palm Oil (Research Cess) Order 1979 (the 1979 Order). Under para. (2) of the 1979 Order a "palm oil miller" means "a person who carries on the business of extracting **oil from oil palm fruits and/or seed**s."

Cess was imposed under para. 3 and the paragraph reads:

> 3. Every palm oil miller shall pay cess of four ringgit for every metric ton of **crude palm oil** produced by him.

Considering that there has been some confusion in the High Court judgment on the 1979 Order and the subsequent Orders it is best that the 1979 Order is reproduced substantially:

> PALM OIL RESEARCH AND DEVELOPMENT ACT 1979
>
> Palm Oil (Research Cess) Order 1979
>
> In exercise of the powers conferred by section 14(1) of the Palm Oil Research and Development Act, the Minister, after consultation with the Palm Oil Research and Development Board and with the minister of Finance, makes the following Order:

1. This Order may be cited as the Palm Oil (Research Cess) Order 1979, and shall come into force on the 1st January 1980.

2. In this Order, "palm oil miller" means a person who carries on the business of extracting oil from **oil palm fruits and/or seeds.**

3. Every palm oil miller shall pay a cess of four ringgit for every metric ton or part of a metric ton of **crude palm oil** produced by him.

4. Every palm oil miller shall pay cess to the Palm Oil Research and Development Board not later than the 35th day of each quarter of a calendar year for **crude palm oil** produced by him during the preceding quarter.

5. Every palm oil miller shall submit to the Board not later than the 7th day of each month a true return in the appropriate form as prescribed by the Board showing the amount of **crude palm oil** produced by him during the preceding month.

6. Any person who contravenes any provision of this Order shall be guilty of an offence and shall on conviction be liable to a fine not exceeding one thousand ringgit or to imprisonment for a term not exceeding six months, or to both.

Made the 14th December 1979
(KPU.(E) O. 8/1/96/13; PN.(PU2)354)

DATO' LEONG KHEE SEONG
Minister of Primary Industries. (emphasis added)

The rates of cess were varied from time to time and peculiarly, instead of having separate orders made for the variations, the 1979 Order was amended from time to time. On 29 March 1982 the 1979 Order was amended by the Palm Oil (Research Cess) (Amendment) Order 1982 (the 1982 Amending Order) which had retrospective effect as from 1 January 1980 and it is reproduced below:

P.U.(A) 195

PALM OIL, RESEARCH AND DEVELOPMENT ACT 1979

Palm Oil (Research Cess) (Amendment) Order 1982

In exercise of the powers conferred by section 14(1) of the Palm Oil Research and Development Act 1979, the Minister, after consultation with the Board and with the Minister of Finance, makes the following Order:

1. This Order may be cited as the Palm Oil (Research Cess) (Amendment) Order 1982 and shall be deemed to have come into force on the 1st January 1980.

2. The Palm Oil (Research Cess) Order 1979 is amended by substituting the following paragraph for paragraph 1;

1. This Order may be cited as the Palm Oil (Research Cess) Order 1979 and shall come into force on the 1st January 1980 in respect of cess on **crude palm oil extracted from oil palm fruits** and on the 1st July 1980 in respect of cess on **crude palm oil extracted from oil palm seeds.**

Made the 29th March 1982
(KPU.(E) O. 8/1/96/13; PN.(PU2)354)

DATO' LEONG KHEE SEONG,
Minister of Primary Industries

(To be laid before the Dewan Rakyat pursuant to section 14(3) of the Palm Oil Research and Development Act 1979). (emphasis added)

To be noted in this amending order is that the reference is not only to "crude palm oil extracted from **oil palm fruits**" but to "crude palm oil extracted from **oil palm seeds**." In other words a distinction was made in regard to cess imposed on "crude palm oil extracted from oil palm fruits" from 1 January 1980 and cess imposed on "crude palm oil extracted from oil palm seeds" as from 1 July 1980.

Confusingly there was another amending order P.U.(A) 485 of 1984 (the 1984 Amending Order) to this amending order made on 20 December 1984 but which again had retrospective effect as from 1 January 1980 and its purpose was the imposition of cess through amendment of para. 3 of the original 1979 Order:

3. Every palm oil miller shall pay a cess of five ringgit for every metric ton or part of a metric ton of crude palm oil produced by him.

What is to be noted is that there is no mention of oil palm **kernel** either in the Act or in any of the Orders made under s. 14.

It is not disputed that Premium Vegetable Oils Sdn. Bhd., the plaintiff in the case below, is a company in Johore engaged, *inter alia*, in the production of **"Crude Palm Kernel Oil"** (CPKO) which is a liquid substance extracted from oil palm kernels by the use of a chemical and solvent process and that these operations are conducted at its factory situated in Pasir Gudang. It also has another factory in Kulai producing crude palm oil (CPO) extracted from oil palm fruits and seeds.

On 26 June 1993 the Director General of Palm Oil Research Institute of Malaysia (a body established under s. 7 of the Act), (the 2nd defendant) in the case below, issued a letter of demand for RM225,310 for the payment of cess on the CPKO production said to be due under the 1979 Order as amended by the 1982 and 1984 Amending Orders for the period inclusive of January 1990 to May 1993.

The plaintiff refused to pay the cess demand. However, the plaintiff had previously paid the 2nd defendant a total sum of RM363,034 purportedly as cess due between July 1985 to June 1989.

The plaintiff claimed for a declaration that the defendants were not empowered to levy and collect the CPKO and for an order for the refund of the sum of RM363,034. The basis of the claim before the judge was that the Minister had no power to impose cess on CPKO. The defendants counter claimed for RM255,300 being the cess payable. The learned judge ruled, however, that the Minister had acted *intra vires* s. 34 in making the 1979 Order and the 1982 and 1984 Amending Orders and dismissed the claim and allowed the counter claim. Thus this appeal.

I need to consider the definition of "palm oil" in s. 2 and what the expressions "oil palm fruits" and "oil palm seeds" mean contextually in the definition of "palm oil" in s. 2 and also what the expression "oil palm kernel" which does not appear in the definition under s. 2 means. Section 2 of the Act defines "palm oil" thus:

> 'Palm oil' means oil, whether in crude or further processed form, extracted from oil palm fruits and seeds.

We have already adverted to s. 14 of the Act where the Minister "may make orders for the imposition ... of a research cess on palm oil" and the "orders may specify the nature ... of the cess".

According to the plaintiff with the expression "oil palm fruits and seeds" the Minister is empowered to make order under s. 14 for the imposition of cess for Crude Palm Oil (CPO) and not for Crude Palm Kernel Oil (CPKO) as CPO is made from oil palm fruits and seeds while CPKO is made only from oil palm seeds.

I need to understand what "seed" and "kernel" mean. Evidence was adduced by the plaintiff in the High Court to show that at the Kulai Factory the plaintiff first separates oil from the pulp (the mesocarp) and some seeds of the oil palm fruit by way of physical extraction ie, by forcing the fruit through a press. From this process called "crushing" CPO is produced.

Not all seeds are crushed. The remaining seeds are then put through another process by which the fibre is separated from the seed and the shell of the seed is separated from what is inside it; the kernel is what is within the shell.

The palm kernels from Kulai Factory and from other mills are then transported to the Pasir Gudang Factory. At this factory the whole kernel is put to a process of chemical solvent extraction and oil is produced and it is called "Crude Palm Kernel Oil" (CPKO).

As to what is a seed we have the evidence of a witness of the defendants, an Agricultural Consultant, who is a botanist and has a Ph D in Genetics in oil palm. He describes the oil palm fruits and their make up:

> (The fruit) has an outer pulpy layer – usually called mesocarp. Under the mesocarp, there is a hard layer which is called the shell. Inside the shell is a white layer called the kernel and within the kernel there is embedded an embryo. The whole structure is known as the fruit which has one seed – and the seed comprises of the shell, the kernel and the embryo. The embryo is the one that grows into a new plant. The kernel is the food reserve to support the growth of the young plant. The shell is the hard protective layer which plays no part in the germination process. The seed as it is constituted is made up of the shell, the kernel and the embryo and has the capacity to produce a new plant ...

The witness in answer to a question whether in the specialised palm oil industry the term "seed" has a specialised meaning, ie, whether it is not only capable of germination but also of producing a strain of oil palm according to the buyer's needs had this to say:

> Only in the context of planting material – the seed remains the seed, but not all seeds are going to be used in the propagation. The seeds that are going to be used in the propagation will not be used to extract oil. The seeds from which oil is extracted cannot be used for propagation.

There obviously is a clear distinction between the oil palm fruit on the one hand and the oil palm seed which contains within itself the oil palm kernel.

So we go back to the definition of "palm oil" in the Act and to the 1979 Order and the other two Amending Orders.

It is the argument of the plaintiff that the language of the Act read together with the said 1979, 1982 and 1984 Amending Orders is ambiguous as to what may be subject to cess and that as a matter of interpretation relating to a taxing provision the provision must not be of doubtful and ambiguous meaning – the provision must expressly provide for the imposition and collection of such tax.

The cess which can be imposed under s. 14 is a tax – it is not a tax which when collected goes into the Consolidated Fund of the Federation of Malaysia but goes directly into the fund as directed under s. 10.

In *Greenwood v. F.L. Smidth & Co.* [1922] 1 AC 417 Lord Buckmaster stated at 423 that the courts cannot assent to the view that if a section in a taxing statute is of doubtful and ambiguous meaning, it is possible out of that ambiguity to extract a new and added obligation not formerly cast upon the tax-payer. Similarly in *Controller-General of Inland Revenue Malaysia v. T* [1970] 2 MLJ 35 at 40 Justice Gill FJ had this to say:

> In the absence of a clear intention that tax should be imposed, the respondent is not liable to payment for the sum granted for the abrogation of his contract. It is an important canon in the construction of revenue Acts that the subject is not to be taxed unless there are clear words in the Act imposing such a tax.

I had noted that in the definition of "oil palm" in s. 2 it is the oil extracted from "oil palm fruits and seeds" and we know – it is common knowledge and there is the evidence of the Agricultural Consultant – that the fruit contains the seed and yet it is worded that way. The language does give the impression that the oil to be extracted is from a process which involves both the mesocarp component of the fruit and the seed components of the fruit. The words "fruits and seeds" are linked by the conjunctive "and" and it seems more probable that the legislature intended the definition to mean oil that is extracted from a process which involves the mesocarp and the seed components of the fruit. If the legislative had intended otherwise it could have used the words "from oil palm fruits and seeds or from oil palm fruits or from oil palm seeds" bearing in mind "fruits" mean the mesocarp component of the fruits. Admittedly there is ambiguity and the 1979 Order which recognized the ambiguity employed the words "and/or", as was pointed earlier, to denote extraction from palm fruits and seeds or from palm fruits or from palm seeds. Paragraph 2 of this Order reads:

> 2. In this Order, 'palm oil miller' means a person who carries on the business of extracting oil from oil palm **fruits and/or seeds**.

This was a clear recognition also that a miller could produce oil from oil palm fruits in one process and also produce oil from palm oil seeds in a different process. But while this was recognised cess was payable only on "crude palm oil" (see para. 3 of the 1979 Order) and obviously this expression had to relate back to the definition in s. 2 meaning that it is oil extracted from the "oil palm fruits and seeds".

The learned trial judge did recognise the inherent ambiguity of the language used in s. 2 relating to "crude palm oil" in the definition of "palm oil" and the various Orders and he tried to read more into para. 3 of the 1979 Order which states "every palm oil miller had to pay a cess for every metric ton or part of a metric ton of crude palm oil produced by him."

The learned trial judge stated in regard to this provision:

> Importance and great emphasis is being placed by me on the usage of the prefix (of) to crude palm oil (as used for every metric ton of crude palm oil). According to *Concise Oxford Dictionary* – 9th Edn. 'of' has been defined expressing a wide range of relations broadly describable; ie, a broad aspect of the class of palm oil including crude kernel palm oil (CPKO) and not restrictive to a unit.

With respect to the learned judge I do not think I can agree with him on the interpretation of the preposition "of" to the extent he says it should be and we have to remember the 1979 Order is a subsidiary legislation and cannot enlarge what is circumscribed by the enabling provision of the mother Act.

It is also for the same reason that I cannot agree with the learned judge who, though obviously finding ambiguity in the language used in the Act, tried to harmonise the language of the Act with the language of the Orders made thereunder. He said:

> Further at the time when the Act was passed, Parliament had clearly intended and well-recognised that cess payable on all palm oil ie, oil, whether in crude or other further processed form extracted from oil palm fruits and seeds; and the words:
>
> (i) 'fruits and seeds' in the Act of 1979;
>
> (ii) 'fruits and/or seeds' in the Palm Oil (Research Cess) Order 1979;
>
> (iii) crude palm oil extracted from oil palm fruits crude palm oil extracted from oil palm seeds in the Order of 1982;
>
> are loosely used to be read in harmony, to convey the only one meaning, that Parliament had in fact intended that all palm oil millers were required to pay cess on any kind of crude oil, be it produced from the fruits and/or the seed; and the Courts in the construction of the words are not to be restricted by the words the legislature had chosen to use, and this Court had taken that absolute liberty to determine that intended intention ...

Words cannot be used loosely in a taxing provision. They must be clear and unambiguous to impose liability on the subject. I find that to the extent the Amending Orders have imposed cess on palm oil extracted from only oil palm seeds they are *ultra vires* the Act.

I would therefore allow the appeal and set aside the orders made by him.

I would make the following orders:

(1) a declaration that the defendants are not empowered under the said Act nor the Palm Oil (Research Cess) Order 1979 as amended by the Palm Oil (Research Cess) (Amendment) Order 1982 and the Palm oil (Research Cess) (Amendment) Order 1984 to levy cess on the plaintiff for production and or extraction of CPKO and that the counter claim of the defendants has no basis.

(2) the sum of RM363,034 paid to the 2nd defendant is to be refunded by the 2nd defendant to the plaintiff;

(3) interest thereon at 8% per annum from July 1985 to date of realization.

Costs of the Appeal and in the court below to the plaintiff. Deposit to be refunded.